



PREPAID HOME HEATING OIL CONTRACTS

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QUESTIONS

What requirements govern prepaid home heating oil contracts in Connecticut? How do surrounding states regulate these contracts? Since 2011, which Connecticut home heating oil dealers have gone out of business, or filed for bankruptcy, without delivering the oil specified in the prepaid contracts?

This report updates OLR Report [2010-R-0413](#).

SUMMARY

Connecticut law (1) requires certain terms in prepaid home heating oil contracts, (2) requires that any prepaid oil contract be secured within five business days and specifies two acceptable methods, (3) requires oil dealers to notify the Department of Consumer Protection (DCP) under certain circumstances, and (4) provides penalties for violations.

The surrounding states regulate prepaid heating oil contracts in various ways. Maine, New Hampshire, and Vermont have contract term requirements and allow dealers to secure contracts in three different ways, compared to two in Connecticut. Rhode Island has contract term requirements but does not require dealers to secure their contracts. Massachusetts and New York do not have specific prepaid oil contract requirements. Rather, enforcement is governed by broader criminal and consumer protection statutes.

Since 2011, only Ace Oil has declared bankruptcy, but in the last decade at least four others have declared bankruptcy. (For more information on pre-2011 companies, see OLR Report [2010-R-0413](#).)

CONNECTICUT LAW

Contract Terms

The law requires a contract for the sale of prepaid home heating oil, and it requires the contract to disclose in writing the terms and conditions. The disclosure must (1) be in plain language, (2) immediately follow the language about the price or service that could be affected, and (3) be in at least 12-point boldface type of uniform font (CGS § [16a-23n\(a\)](#)).

The contract must also include, in clear and specific language: (1) the amount of money paid; (2) the maximum number of gallons the dealer committed to deliver; (3) a statement that contract performance is secured; and (4) a statement explaining that the contract price of undelivered fuel owed to the consumer will be reimbursed within 30 days after the contract ends, unless the parties agree otherwise (CGS § [16a-23n\(f\)](#)).

By law, prepaid oil contracts cannot (1) require a commitment to purchase oil for more than 18 months or (2) contain an automatic contract renewal or extension clause (CGS § [16a-23n\(e\)](#)).

Securing Prepaid Contracts

Connecticut law requires prepaid oil dealers to secure their contracts within five business days of acceptance. They may secure a prepaid contract using one of two methods. The first is by obtaining heating fuel futures or forwards contracts, physical supply contracts, or other similar commitments, the total amount of which allows the dealer to purchase, at a fixed price, at least 80% of the maximum number of gallons of fuel or amount that the dealer is committed to deliver under all of its guaranteed price contracts. The second method is by obtaining a surety bond of at least 50% of the total amount paid by consumers (CGS § [16a-23n\(d\)](#)).

Notifications

Connecticut law requires prepaid home heating oil dealers to (1) inform the DCP commissioner, in writing, that they are entering into prepaid contracts and (2) identify anyone that they have used to secure the contract. Additionally, dealers must notify DCP if the (1) heating fuel contract security option drops below 80% or (2) surety amount is 50% or less than the remaining balance consumers paid under prepaid contracts (CGS § [16a-23n\(g\)](#)).

The law also requires anyone who secures a prepaid contract for a dealer to notify DCP within three business days if the contract is cancelled (CGS § [16a-23n\(h\)](#)).

Penalties

Dealers who violate the prepaid oil provisions are deemed to have committed an unfair and deceptive trade practice (CUTPA) violation. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violating a restraining order (CGS § [16a-23r\(a\)](#)). (For more information on CUTPA violations, see OLR Report [2011-R-0494](#).)

In addition to the CUTPA violation, dealers could be subject to certain fines for violating the prepaid oil provisions. The fines are up to (1) \$500 for a first offense, (2) \$750 for a second offense within three years of the prior offense, and (3) \$1,000 for a third or subsequent offense within three years of a prior offense (CGS § [16a-23r\(c\)](#)).

Additionally, a dealer who knowingly fails to secure a prepaid contract is guilty of a class A misdemeanor, punishable by up to one year imprisonment, a fine of up to \$2,000, or both (CGS § [16a-23r\(b\)](#)). The state's attorney may also prosecute dealers for various other related criminal charges, including larceny and conspiracy.

REGULATION OF PREPAID OIL PURCHASE CONTRACTS IN SURROUNDING STATES

The degree to which states surrounding Connecticut regulate prepaid oil purchase contracts varies. Neither Massachusetts nor New York has specific statutes regulating such contracts, although both have broader consumer protection laws that have been applied in civil and criminal cases.

Maine

Maine law requires prepaid contracts for home heating oil to be in writing and disclose the terms and conditions in plain language. The contract must be printed in at least 12-point boldface type of uniform font and contain language about the price or service that could be affected (Me. Rev. Stat. Ann. Tit. 10, § 1110(1)). The contract must also indicate the amount the consumer paid, maximum number of gallons committed, and the contract is secured (Me. Rev. Stat. Ann. Tit. 10, § 1110(4)).

By October 31 of each year, dealers must file an annual report with the commissioner of Professional and Financial Regulation demonstrating how they satisfied the prepaid law requirements, including how the contracts are secured.

The law requires prepaid dealers to secure and maintain their contracts using one of three methods. These are:

1. a contract or similar commitment that guarantees the dealer may purchase, at a fixed price, at least 75% of the oil he or she has committed to deliver;
2. a surety bond in an amount of at least 50% of the total amount the consumer paid to the dealer;
3. a letter of credit representing 100% of the dealer's oil cost (Me. Rev. Stat. Ann. Tit. 10, § 1110(2)).

Regardless of the method used to secure the contract, dealers must maintain the required securitized amount for the entire time a contract is effective, but the amount may be reduced to reflect the amount of oil that has been delivered and the consumer has paid (Me. Rev. Stat. Ann. Tit. 10, § 1110(3)).

Dealers must reimburse consumers at the contract price for any undelivered pre-purchased oil within 30 days after the contract ends, unless there is an agreement for different terms (Me. Rev. Stat. Ann. Tit. 10, § 1110(5)).

Failing to comply with any prepayment provision is deemed a violation under the Maine Unfair Trade Practices Act (Me. Rev. Stat. Ann. Tit. 10, § 1110(8)).

New Hampshire

New Hampshire law requires prepaid oil contracts to be in writing and to disclose the terms and conditions of the contract (N.H. Rev. Stat. Ann. § 339:79(I)). A prepaid contract must indicate the:

1. total amount of money the consumer must pay,
2. gallons of oil the dealer must deliver,
3. price per gallon,
4. payment terms,
5. contract duration,
6. dealer's enforceable remedies upon the consumer's non-performance, and
7. contract is secured (N.H. Rev. Stat. Ann. § 339:79(II)).

The contract must not require consumers to commit to a term of more than 12 months, beginning no earlier than January 1. It must also include a clear explanation of how the dealer will meet the contract's obligations, including supplier

agreements, futures contracts, bonding, or line of credit. Additionally, dealers must reimburse consumers at the contract price for any undelivered pre-purchased oil within 30 days after the contract ends, unless there is an agreement for different terms. Dealers must not (1) falsely claim the oil has been secured or (2) fail to maintain such security. Such violations are class A misdemeanors, punishable by up to one year imprisonment or up to a \$2,000 fine (N.H. Rev. Stat. Ann. § 339:79(III)).

New Hampshire law requires dealers to secure their contracts within seven days of the contract's acceptance. They can secure and maintain the contract using one of three methods that are substantially similar to those in Maine and Vermont (N.H. Rev. Stat. Ann. § 339:79(IV)).

Failing to comply with any prepayment provision is deemed an unfair or deceptive act or practice.

Rhode Island

Rhode Island law requires prepaid home heating oil contracts to clearly define the terms and conditions of the price plan. The contract must be in plain language and include language about the price or service that could be affected. The disclosure must include any additional fees or costs for securing the contract and any early termination fees. Contracts initiated verbally must be confirmed in writing within 14 days and be in at least 12-point font (R.I. Gen. Laws § 5-82-1(a)).

The law limits prepaid heating oil contracts to 12 months (R.I. Gen. Laws § 5-82-1(d)). A violation of any prepayment provision renders a contract null and void (R.I. Gen. Laws § 5-82-1(e)).

Vermont

Vermont law requires prepaid home heating oil contracts to be written in plain language with 12-point boldface uniform font. The contract must also disclose its terms and conditions, including language about the prices or services that could be affected (Vt. Stat. Ann. tit. 9, § 2461e(a)). It must also indicate the (1) amount the consumer paid, (2) maximum number of gallons committed, and (3) contract is secured (Vt. Stat. Ann. tit. 9, § 2461e(c)(1)).

Dealers must secure these contracts using one of three methods that are substantially similar to Maine and New Hampshire (Vt. Stat. Ann. tit. 9, § 2461e(b)(1)). They must maintain the amount of futures contracts required while the contract is effective, but the amount may be reduced to reflect (1) the amount of oil that has been delivered and (2) what the consumer has paid (Vt. Stat. Ann. tit. 9, § 2461e(b)(2)).

Dealers must reimburse consumers at the contract price for any undelivered pre-purchased oil within 30 days after the contract ends, unless there is an agreement for different terms (Vt. Stat. Ann. tit. 9, § 2461e(c)(2)).

For violations, Vermont law allows consumers to sue under the state consumer protection act. It allows the attorney general or state's attorney to apply for injunctions and other court actions. They may also request the court to (1) impose civil fines of up to \$10,000 for each violation or (2) order restitution of cash or goods (Vt. Stat. Ann. tit. 9, § 2458).

OIL DEALER BANKRUPTCY SINCE 2011

Since 2011, only Ace Oil has declared for bankruptcy, but in the last decade at least four others have declared for bankruptcy. (For more information on pre-2011 companies, see OLR Report [2010-R-0413](#).)

Ace Oil

In 2013, Ace Oil Co. LLC, filed for chapter 7 bankruptcy with reportedly nearly \$3 million in debt, with half owed to prepaid oil consumers.

According to published reports, in a meeting with the U.S. Bankruptcy Court Trustee, Jeffrey Doucette (owner of Ace Oil) testified under oath that he owed money to terminal operators and he had not misspent the money. He also stated that he and his wife only took modest sums of under \$40,000 for an annual salary. The bankruptcy court records show 290 pages of creditors that are owed money ranging from several hundreds of dollars to \$425,000 (see "Oil Dealer's Bankruptcy Leaves Many in the Cold" *The Meriden Record-Journal*, January 22, 2014, available at: <http://www.myrecordjournal.com/meriden/meridennews/3476436-129/oil-companys-bankruptcy-could-leave-pre-paid-customers-in-the-cold.html>).

The attorney general and the DCP commissioner have both advised consumers to seek alternative home heating oil suppliers. Both DCP and the attorney general are investigating the situation. Consumers affected by the bankruptcy can file a complaint with DCP on a complaint form available on the department's website (available at http://www.ct.gov/dcp/lib/dcp/pdf/ace_oil_complaint_oil_form.pdf).

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